

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 943 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?No

S.R.KAMDAR AND CO

Versus

STATE OF GUJARAT

Appearance:

Shri N.K.Pahwa, Advocate, for Shri P.M.Thakkar, for the Petitioner.

Shri A.G.Uraizee, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 21/08/96

ORAL JUDGEMENT

The order passed by and on behalf of the State

Government (respondent No.1 herein) on 10th May 1984 under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under Article 226 of the Constitution of India. By its impugned order, respondent No.1 quashed and set aside the order passed by the Competent Authority at Rajkot (respondent No.2 herein) on 14th November 1979 under Section 8 (4) of the Act ordering closure of the declaration in the prescribed form filed by and on behalf of the petitioner.

2. The facts giving rise to this petition move in a narrow compass. The petitioner is a partnership firm. It filed its declaration in the prescribed form with respect to its holding within the urban agglomeration of Rajkot. It was duly processed by respondent No.2. After observing necessary formalities under Section 8 of the Act, by his order passed on 14th November 1979 under Sub-Section (4) thereof, respondent No.2 found the holding of the petitioner to be within the ceiling limit and ordered closure of the proceeding. Its copy is at Annexure-A to this petition. It appears to have come to the notice of the concerned officer of respondent No.1. He appears to have found it not according to law. Its suo motu revision under Section 34 of the Act was therefore contemplated. A show cause notice thereupon came to be issued on 15th September 1983 calling upon the petitioner to show cause why the order at Annexure-A to this petition should not be revised under Section 34 of the Act. Its copy is at Annexure-B to this petition. The petitioner filed its reply thereto on 11th November 1983. Its copy is at Annexure-C to this petition. Thereafter, by the order passed by and on behalf of respondent No.1 on 10th May 1984, the order at Annexure-A to this petition came to be set aside and the matter was remanded to respondent No.2 for deciding the case afresh in the light of the observations made therein. Its copy is at Annexure-D to this petition. The aggrieved petitioner has therefore approached this court by means of this petition under Article 226 of the Constitution of India for questioning its correctness.

3. As rightly submitted by learned Assistant Government Pleader Shri Uraizee for the respondents, this court ordinarily does not interfere with the order of remand. Learned Advocate Shri Pahwa for the petitioner has however urged that the ipse dixit findings recorded in the impugned order at Annexure-D to this petition would come in the way of the petitioner in establishing its case before respondent No.2 after remand.

4. The author of the impugned order at Annexure-D to this petition has found the partnership of the petitioner to be sham and bogus. It transpires from the tenor of that finding that it is ipse dixit and it is not supported by any reason whatsoever. It cannot be said to be a finding according to law.

5. Similarly, the author of the impugned order at Annexure-D to this petition has observed that the land required to be kept open in view of the Ribbon Development Rules need not be excluded from the holding of the petitioner in absence of any provisions in that regard. The contention raised by and on behalf of the petitioner in that regard was a legal contention. It ought to have been answered in accordance with law and not in the manner it is answered in the impugned order at Annexure-D to this petition. Such conclusion on the part of the author of the impugned order at Annexure-D to this petition can be said to be an outcome of non-application of mind on his part. That conclusion cannot therefore hold the field.

6. Ordinarily, I would have remanded the matter to respondent No.1 in view of my aforesaid discussion. However, since the order of respondent No.2 at Annexure-A to this petition is found to be laconic by this court as well in this petition, the order of remand at Annexure-D to this petition need not be interfered with at this stage subject to the modification that the aforesaid finding and conclusion recorded therein will not influence the decision of respondent No.2. It is made clear that under the order of remand at Annexure-D to this petition, respondent No.2 will restore the proceeding to file and will decide the matter afresh according to law uninfluenced by the observations made in the impugned order at Annexure-D to this petition. If necessary, the petitioner may be permitted to bring on record certain other material to establish its case before him.

7. In the result, this petition fails. It accordingly stands disposed of in view of the observations made in this judgment. Rule is accordingly discharged with no order as to costs.

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